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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

Application Number: 10/611,319

Filing Date: July 01, 2003

Appellant(s): SCHLAAK ET AL.

NOV 14 2008

GROUP 3600

Thomas M. Coester
For Appellant

EXAMINER'S ANSWER

This is in response to the Supplemental appeal brief filed on 08/14/2008 appealing from the Office action mailed 01/19/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6085170	Tsukuda	7-2000
20020143605	Holland et al.	10-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 11-17, and 21-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsukuda [US 6,085,170].

Regarding claims 1, 3, 6, 11, 13, 21, and 23, Tsukuda discloses a method for use in managing a supply chain multiple customers, comprising: receiving a new delivery schedule from a customer [see abstract and flowchart of figure 1 (e.g. block 102)]; determined a deviation between the new delivery schedule and a confirmed delivery schedule from the customer [see column 4, lines 3 - 9 (e.g. differences from various view points, such as from a view point of the distributor, a view point of the agent, and a view point of the purchaser), figure 3, and see column 5, lines 49 - 67]; and determining if the new schedule is eligible for further consideration based on the deviation [see column 9, lines 56 - 63 (e.g. the delivery goods information is constructed by further adding items or columns "size(s)" and "necessity of refrigeration of the goods)]; generating a schedule of production resources and inventory that satisfies at least some requirement of the new delivery schedule [see abstract, and via step 101 (e.g. list of a schedule for delivery by using the delivery information 121)]; and confirm to the customer that the supplier accepts the new delivery schedule [via step 1907. (e.g. confirming the existence of the scheduled)].

Regarding claims 2, 12, and 22, Tsukuda discloses: generating comprises updating an existing schedule of production resource [see abstract, and see column 2, lines 41 - 47].

Regarding claims 4, 14, and 24, Tsukuda discloses: determining the deviation comprises comparing items from the new delivery schedule to item from the confirmed delivery schedule [see column 7, lines 4 - 15 (e.g. comparing the purchased goods information through the network and that inputted through the input apparatus), and see claim 3].

Regarding claims 5, 15, and 25, Tsukuda discloses the items comprise quantities of goods to be delivered at specified dates [column 2, lines 17 - 25 (e.g. desired date and time for the delivery service)]. Regarding claims 6, 16, and 26, Tsukuda discloses: the deviation is indicative of an error if the deviation exceeds a predetermined tolerance [see figure 14].

Regarding claims 7, 17, and 27, Tsukuda discloses: prompting a user for input if the deviation exceeds the predetermined tolerance [see figure 2 (e.g. input device)]; determining if the new delivery schedule is eligible for further consideration is based, at least in part, on the user input [see figure 3, and see column 7, lines 10 - 15].

Claims 8-10, 18-20, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsukuda, and further in view of Holland et al. [US 2002/0143605].

Regarding claims 8-10, 18-20, and 28-30, Tsukuda discloses all elements per claimed invention as explained above. Tsukuda does not explicitly disclose: the new

delivery schedule comprises a forecast of delivery requirements, a long term forecast, and allocating resources based on the schedule of production resources.

However, Holland discloses: the new delivery schedule comprises a forecast of delivery requirements, a long term forecast [see paragraph 0033 (e.g. forecasts delivery schedules), and paragraph 0047 (e.g. week 5 represent forecasted deliveries to be made)], and allocating resources based on the schedule of production resources [see paragraphs 0010, 0033, and 0050].

Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Tsukuda's invention to include Holland's forecasting method, and allocation resources. The motivation to combine would provide a method and apparatus for a plurality of businesses to manage supply and demand of critical business resources [see paragraph 11].

(10) Response to Argument

The Supplemental Appeal Brief filed on 08/14/2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the Tsukuda and Holland references.

Appellants argue in substance that Tsukuda and Holland do not disclose or suggest "determined a deviation between the new delivery schedule and a confirmed delivery schedule from the customer"; "determining if the new schedule is eligible for further consideration"; "and generating a schedule of production resources and inventory that satisfies at least some requirement of the new delivery schedule". Contrary to the appellants' assertion, the Examiner respectfully submits that Tsukuda discloses means for determining the date and time for delivery of the delivery goods and

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also means for notifying of arrival and/or departure of the goods to and/or from and agent to at least one of the distribution server. In accordance with Tsukuda's invention, it is provided means for determining scheduled date and time for delivery of the purchased commodities or goods, from Schedule information of delivery information of each area of the distributor and schedule information of the purchaser.

Tsukuda describes in figure 14 if a new schedule is eligible for further consideration. The delivery goods information in figure 14 is constructed by further adding items or columns "size(s)" and "necessity of refrigeration of the goods" to the items of the delivery goods information shown in figure 4.

Tsukuda further describes in step 101, which is a notification step that generates a list of schedule of production resources and inventory for delivery by using the delivery information 121 and delivery goods information 122.

The Appellants also argue on how different viewpoints or content of information for management names for the same "commodities or goods" teach or disclose determining a deviation between the new delivery schedule and a confirmed delivery schedule from the customer. Tsukuda describes means for notifying and means for determining of arrival and/or departure of the goods to and/or from the agent to at least one of the distribution server [see abstract and summary of the invention].

The combination of Tsukuda and Holland are both concerned with delivery managing delivery system. References are selected as being reasonably pertinent to the problem based on the judgment of a person having ordinary skill in the art. It is necessary to consider the reality of the circumstances, in other words, common sense

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in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor. *In re Wood*, 599 F.2d 1032, 1036, (C.C.P.A. 1979).

The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately. The prior art differs from the claim by the substitution of some components. The substituted components were known. The technical ability existed to substitute the components as claimed and the result of the substitution is predictable.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Garcia Ade

/Matthew S Gart/

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